No. 20914

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 12

On Petition for Enforcement of an Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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AUTHORITIES CITED

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JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board for enforcement of its order issued against respondent on November 18, 1965, pursuant to Section 10(c) of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Section 151, *et seq.*).[1] The Board's Decision

[1] The pertinent statutory provisions are reprinted, *infra*, pp. 21-24.

and Order (R. 18-31, 35-36)[2] are reported at 155 NLRB No. 89. This Court has jurisdiction of the proceeding under Section 10(e) of the Act, the unfair labor practices having occurred in the port of North Bend-Coos Bay, Oregon.

STATEMENT OF THE CASE

I. The Board's findings of fact

Briefly, the Board found that respondent violated Section 8(b)(2) and (1)(A) of the Act by refusing to dispatch three employees to longshore jobs and by barring them from the dispatch hall, because they engaged in a concerted protest against respondent's dispatching procedures. The facts upon which the Board based its findings are as follows:

The Pacific Maritime Association ("PMA") is an association of employers in the shipping and stevedoring industry which represents its members in collective bargaining with the International Longshoremen's and Warehousemen's Union ("ILWU") (R. 18; Tr. 7, 11, U. Ex. 2, p. 1, R. 14). ILWU is the bargaining agent of certain Pacific Coast longshoremen employed by the PMA companies (U. Ex. 2, p. 1). In 1961, PMA and ILWU entered into a five-year collective bargaining agreement (R. 20; U. Ex. 2, p. 1). The agreement provides that the "hiring

[2] References to the pleadings reproduced as "Volume I, Pleadings" are designated "R." References to the stenographic transcript of the hearing reproduced pursuant to Court Rule 10 are designated "Tr." References to the General Counsel's and the Union's exhibits are designated "G.C. Ex." and "U. Ex.", respectively.

and dispatching of all longshoremen shall be through halls operated jointly by [ILWU and PMA]," and that there "shall be one central dispatching hall in each of the [Pacific Coast] ports with such branch halls as shall be mutually agreed upon." (U. Ex. 2, p. 42.) The agreement requires that the expense of operating the dispatch halls "shall be borne one-half by the local union and one-half by the Employers." (R. 20; U. Ex. 2, p. 42, Tr. 144-145.) The agreement provides for the establishment of a Joint Port Labor Relations Committee ("Joint Committee") in each port, composed of an equal number of ILWU and PMA representatives (R. 20; Tr. 135, U. Ex. 2, pp. 63-64). Under the terms of the agreement, the Joint Committees investigate and adjudicate grievances and direct the operation of the dispatch halls in their respective ports. Dispatchers are to be selected by the International "through elections." (R. 20; U. Ex. 2, pp. 43, 64).

Local 12, ILWU, is the local affiliate in the Oregon Port of North Bend-Coos Bay (R. 20; Tr. 166). Bernard Warnken, Lee Thomas and Donald Wilson worked in this port as "casual" longshoremen, that is, as non-registered longshoremen who are dispatched to jobs when no registered longshoremen are available (R. 20; Tr. 15, 12). Casuals call the dispatch hall early each morning. A tape recording tells them the prospects for employment that day. If the recording offers encouragement, the casuals report to the dispatch hall. If sufficient work is available, the dispatcher chooses casuals from among those present and

all" (R. 21; Tr. 57, 105-108, 111). On October 7, the three grievants went to the Air Force base and complained to an officer that his men were taking their jobs (Tr. 57-58). On October 8, shortly after Thomas and Warnken arrived at the hall, Armstrong and Joe Jakovac, the relief dispatcher, came out of of the dispatch office and walked up to where Warnken was talking to another casual. Jakovac asked Warnken where Thomas was. Thomas then walked up and Jakovac said, "I am going to have to ask you fellows to leave this hall. This is a private hall and we've got the right to ask anyone to leave here that we don't want" (R. 21; Tr. 111, 125-126, 137, 170-173). Thomas and Warnken then started to leave and met Wilson coming in the side door (R. 22; Tr. 126, 112). They told him there was no "use going in, because we just got run out" by Jakovac and Armstrong (R. 22; Tr. 126, 58-59). The three men left the hall, but returned later that day, when Thomas went in to talk to Jakovac. Thomas asked Jakovac "just who give you the authority to tell us to stay out of this hall?" Jakovac said, "Me." Thomas asked, "You, yourself"? and Jakovac replied, "Yes, nobody else—me. Now * * * get out and stay out. I'm not going to argue with you" (R. 22; Tr. 127-128).

The same day, Wilson protested to Ferguson by telephone. Ferguson telephoned the hall, called Wilson back, and agreed to give the complainants some definite information by the following Tuesday, October 13. Ferguson told Wilson not to "take any drastic action until then," and Wilson agreed. That Tues-

day the grievants "waited all day [at Wilson's home] and never heard a word" (R. 23; Tr. 59-60). The following day, October 14, they resumed picketing the hall and continued to picket until October 20, when they filed an unfair labor practice charge with the Board (R. 21; G.C. Ex. 1(a), 60, 71-72, 113, 128). At a meeting of the Joint Committee on October 21, the charges came to the attention of the members, whereupon the employer representatives announced that they would have nothing further to do with the matter. The Committee has made no disposition of the grievance. (R. 24; Tr. 72, 91, 140.)

On or about November 13, all three returned to the hall seeking employment (R. 23; Tr. 122-123, 113). Between that time and March 23, 1965, Warnken reported to the hall some 90 mornings without being dispatched to a single job (R. 23; Tr. 113-114, 104, 121, 60-61). Wilson reported for about 50 days without being dispatched, and finally obtained other employment on February 16, 1965 (R. 23; Tr. 60-64, 78-79, 51-52). Thomas reported regularly between November 13 and December 4 or 5 but received no work (R. 23; Tr. 130, 60-61).

Approximately 400 casuals obtained work through the hall during 1964 (R. 20; Tr. 17, 22). During the first three quarters of the year the 14 highest earning casuals in 1964 had wages averaging $3,344.00 (R. 23; G.C. Ex. 2(d)-2(q), Tr. 15). During the same period Wilson earned $2,870.00, which was more than three of the top 14 had earned up to that point (R. 23; G.C. Ex. 2(b), 2(k), 2(f), 2(n)). Warnken earned $2,526.00 during this pe-

riod and Thomas earned $2,053.00 (R. 23; G.C. Ex. 2(a), 2(c)). During the last quarter of 1964 the 14 high earners averaged $1,194.00 in wages, or slightly higher than their average quarterly earnings for the first three quarters of the year (R. 23; G.C. Ex. 2(d)-2(q). The fourth-quarter earnings of the charging parties were zero (R. 23; G.C. Ex. 2(a)-2(c), Tr. 14-15). 1965 wages for the high earnings group, through March 8, averaged more than $930.00; earnings for Warnken and Wilson during this same period were zero, although Wilson reported to the hall until February 16, and Warnken reported regularly throughout this entire period (R. 24; G.C. Ex. 2(a)-2(q), Tr. 113-114, 63-64).

II. The Board's conclusions and order

On the basis of these facts, the Board found that Local 12, by and through the acts of the dispatchers, refused to refer the charging parties to available longshore jobs beginning on October 5, 1964, and subsequently barred them from the dispatch hall, because they had challenged the dispatching procedures in use at the hall, in violation of Section 8(b)(2) and (1)(A) of the Act (R. 29, 26-27). The Board ordered respondent to cease and desist from the unfair labor practices found and to make the employees whole for loss of pay suffered by reason of respondent's unlawful conduct (R. 30) The order also requires that respondent post the usual notices and notify the Joint Committee and the North Bend-Coos Bay dispatchers that the charging parties will have "full use of this

hiring hall without discrimination in connection with their dispatch to employment." (R. 30).

ARGUMENT

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE UNION REFUSED TO REFER WARNKEN, WILSON AND THOMAS FOR EMPLOYMENT, AND EXCLUDED THEM FROM THE HIRING HALL, BECAUSE THEY HAD PROTESTED THE HIRING PROCEDURES IN USE AT THE HALL, IN VIOLATION OF SECTION 8(b)(2) AND (1)(A) OF THE ACT.

Section 8(a)(3) of the Act makes it unlawful for an employer "by discrimination in regard to hire * * * to encourage or discourage membership in any labor organization: * * *." Under Section 8(b)(2) of the Act, it is an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of [Section 8(a)(3)]," while Section 8(b)(1)(A) further forbids a labor organization "to restrain or coerce * * * employees in the exercise of rights guaranteed in Section 7 * * *". Section 7 confers on the employee the right to engage in union activity and "other concerted activities for the purpose of * * * collective bargaining or other mutual aid or protection," as well as the right to "refrain from any or all such activities * * *."

It is settled law that a union violates Section 8(b)(2) and (1)(A) of the Act if, pursuant to an arrangement with an employer requiring union referral as a condition of employment, it refuses to refer

an applicant for employment in order to punish or retaliate against him for protesting the union's policies or questioning the official conduct of its agents. *N.L.R.B.* v. *International Longshoremen's and Warehousemen's Union, et al.*, 283 F. 2d 558, 560-563, 567 (C.A. 9); *Lummus Co.* v. *N.L.R.B.*, 339 F. 2d 728, 734 (C.A. D.C.); *Brewers and Maltsters Local Union No. 6, IBT* v. *N.L.R.B.*, 301 F. 2d 216, 224 (C.A. 8); *N.L.R.B.* v. *H. K. Ferguson Co.*, 337 F. 2d 205, 207-208 (C.A. 5), cert. denied, 380 U.S. 912; *International Brotherhood of Teamsters* v. *N.L.R.B.*, 227 F. 2d 439 (C.A. 10), enforcing 108 NLRB 874; *N.L.R.B.* v. *Carpet, Linoleum, etc., Layers, etc.*, 213 F. 2d 49, 51-52 (C.A. 10); *N.L.R.B.* v. *Pacific Intermountain Express Co.*, 228 F. 2d 170, 173-174, 176 (C.A. 8). See also, *Radio Officers' Union* v. *N.L.R.B.*, 347 U.S. 17, 28-32, 39-42. A union which takes disciplinary action of this nature serves notice upon the employees that anyone who challenges the union's authority or questions the wisdom of its policies or otherwise opposes the union will find himself out of work. The necessary effect is to encourage each employee to support the union by becoming a member and remaining in good standing.[3]

The uncontradicted evidence establishes that the charging parties emphatically and repeatedly challenged as "unjust" and "highly irregular" the infor-

[3] The Supreme Court held in *Radio Officers' Union* v. *N.L.R.B., supra*, 347 U.S. at 39-42, that discrimination which encourages a member to remain in good standing with the union is "discrimination * * * to encourage * * * membership" within the meaning of Section 8(a)(3).

mal dispatching procedures employed by dispatchers Oldland and Jakovac. Between August and October 1964, they attacked those procedures in direct confrontations with the president of respondent and the Joint Port Labor Relations Committee, in a written statement of grievances submitted to the Joint Committee, in direct communications with members of the Committee, by picketing the dispatch hall on two separate occasions, and by filing unfair labor practice charges with the Board. Moreover, the evidence convincingly demonstrates that the dispatchers deliberately overlooked the protestants in referring casuals to jobs. The evidence is uncontradicted that all three of them were present in the hall seeking work on October 5, 6, and 7, 1964, when the dispatcher referred every other casual present and then recruited additional workers from the local taverns and a nearby Air Force installation. The dispatcher on duty, Joe Jakovac, had no explanation for their failure to obtain a referral on these occasions, although, at the hearing, he admitted he knew of their presence at the hall these mornings and did not controvert testimony by General Counsel's witnesses that the hall was emptied by requests for longshoremen and that he was forced to look elsewhere for casuals.

After their arrival the following day, October 8, Jakovac expelled them from the hall. When Thomas returned later in the day and asked Jakovac by what authority he had denied them access to the premises, Jakovac replied that the authority was "me" and that Thomas was to "get out and stay out." (R. 22, Tr.

128). Jakovac insisted that he ordered them out of the hall on October 8 because they had created a disturbance on the previous days, although he conceded that he was unaware of any such misconduct on the morning of the 8th. (Tr. 183, 185-186, 180). The record carries no suggestion that any of the charging parties was warned on the alleged previous occasions. According to Armstrong, president of Local 12, who was present, Jakovac simply walked up to Warnken and Thomas and asked them to leave, without so much as intimating that they were being expelled for disturbing the hall (Tr. 173).

The grievants did not enter the hall again until November 13 when an agent of the Board advised them that during his investigation of the unfair labor practice charges the Union had told him that the expulsion was for one day only (R. 23; Tr. 122, 128-129). They returned but were not rehired. Although they had been among the highest-earning casuals during the first three quarters of 1964, an earnings summary prepared by PMA shows that the protestants' earnings fell precipitately to zero for the period between late September and March 23, 1964, the date of the unfair labor practice hearing, while referrals of other casuals with comparable earnings continued at a slightly higher rate during the same fall and winter. (R. 23-24; G.C. Ex. 2, Tr. 13-15, 28.) Thomas was present in the hall seeking work regularly between November 13 and December 4 or 5 (R. 23; Tr. 130, 60-61); Wilson reported on some 50 mornings between November 13 and February 16, 1965 (R. 23; Tr. 63-64, 78-79, 51-52); Warnken reported on 90

occasions between November 13 and March 23, the date of the Board hearing (R. 23; 113-114, 104, 121, 60-61). The evidence is uncontradicted that casuals were dispatched to work during every weekly pay period between September 28 and the final pay period on the earnings summary (March 8, 1965), with the exception of the week ending November 23 (G.C. Ex. 2). Even Chief Dispatcher Oldland was unable to explain the failure of these men to obtain referrals during this period (R. 24; Tr. 161-162).[4]

On these facts, the Board reasonably found that the charging parties were deliberately bypassed in the hiring process and were expelled from the dispatch hall because they had vigorously challenged the hiring procedures in use at the hall. It is equally clear, moreover, that by filing a grievance and peacefully picketing the dispatch hall in order to defend their job opportunities against what they regarded as an arbitrary system of preferences, these men were en-

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[4] The earnings summary sets out the weekly wages of the 14 highest earning casuals during 1964. While it is true that Oldland maintained an informal list of 13 preferred casuals who owed their special status to their long use of the hall, and that most of the 14 top earners in 1964 were members of this preferred group, others among them (Anderson, Haverinen, Kuykendall, and until late in the year, Miller and Brock), had no special status. (R. 20, 23; Tr. 154, 163-165, G.C. Ex. 2(d)-2(q)) *All* of the top earners, including these five individuals, continued to earn substantial wages during the final quarter of 1964 and the first two months of 1965. (R. 24; G.C. Ex. 2(d)-2(q)). Thus, the Board properly rejected respondent's contention that the charging parties had no earnings during this period because longshore work was scarce (R. 24).

gaged in a legitimate concerted activity for their "mutual aid and protection," the exercise of which is clearly protected against union restraint and coercion by Sections 7 and 8(b)(1)(A). Compare, *Morrison-Knudsen Co., Inc.* v. *N.L.R.B.*, 358 F. 2d 411, 412-414 (C.A. 9).[5]

Thus, in *Brewers and Maltsters Local Union No. 6, IBT* v. *N.L.R.B.*, 301 F. 2d 216 (C.A. 8), three employees in a bargaining unit represented by a Brewers' local of the International Brotherhood of Teamsters wrote to monitors of the international charging the local leadership with "discrimination, favoritism, loss of wages to the writers and a seniority system giving unwarranted preferences," and demanding an investigation of these charges by the monitors. 301 F. 2d at 220. Shortly thereafter, as the Board found, the dominant official of the local, one Lewis, caused the employer to discharge one of the complainants. The Court upheld the Board's finding that Lewis caused the discharge in retaliation for the employee's part in the monitor letter, and the Court agreed with the Board's conclusion that this conduct violated Section 8(b)(2) and (1)(A) of the Act. See also, cases cited *supra*, p. 10.[6]

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[5] Parenthetically, Oldland admitted he had given preferences to some longshoremen's sons and long-time users of the hall; Jakovac conceded in his testimony that he lined up the casuals before selecting them for jobs, as charged by the grievants, although he did not comment upon their characterization of this procedure as personally degrading (R. 22; Tr. 154, 156-159, 182).

[6] According to Jakovac, the complainants were expelled not for filing grievances or picketing but for creating a disturb-

Respondent contends, however, that it was not responsible for the unlawful operation of the dispatch hall because the hall was under the immediate control of the Joint Committee. We show below that the contention is without merit, since the evidence establishes that the dispatchers operated the hall as agents of respondent.

The 1961-1966 Agreement between PMA and ILWU provides that the "hiring and dispatching of all longshoremen shall be through halls maintained and operated jointly by [ILWU] and [PMA] in accordance with the provisions of Section 17." (U. Ex.

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ance in the hall (Tr. 186, 182). His own testimony establishes, however, that what had disturbed him were the legitimate efforts of these men to enlist the support of other casuals in their campaign to persuade Jakovac to abandon his method of selecting casuals for referral. Thus Jakovac explained that he "couldn't really tell what was going on" on the morning of the 8th, but he knew that "there had been a period of time there for several days when these people had been walking around the hall and they were clustered up in bunches and were talking to other people and trying to start a strike against the hiring procedure; and they were pretty active for a period of time and they were in a sense disrupting the people there and the men at all times; and I know that they had, at times, told people to rush up to that [dispatch] window" and seek work on a "first come, first serve" basis, rather than submit to the line-up selection procedure which the grievants had challenged before the Joint Committee. (Tr. 180-182) The Trial Examiner properly found (R. 27) that Jakovac's own version of the events of October 8 constituted an admission that these men were ejected from the hall for protesting his hiring procedures, in violation of Section 8(b)(1)(A) of the Act, although the Board was entitled to find, as it did, that their exclusion was also in retaliation for their other concerted activities (R. 27).

2, p. 42.) Section 17 provides for the establishment of the Joint Port Labor Relations Committees, whose function it is to "maintain and operate the dispatching hall" under the rules and regulations set forth in the agreement (U. Ex. 2, p. 64). The Union's representatives on the Committees are to be chosen by the International (U. Ex. 2, pp. 63-64, 1). Neither the contract nor the ILWU constitution limits the power of the International to remove such representatives at will. Section 8.21 provides that the "personnel for each dispatching hall, with the exception of the Dispatchers, shall be * * * appointed by the Joint * * * Committees of the port." (U. Ex. 2, p. 43.) Dispatchers are to be selected "by the [ILWU] through elections * * *." (U. Ex. 2, pp. 43, 1.)

In the application of these provisions, however, it was respondent, Local 12, which appointed, from its own membership, the union representatives on the North Bend-Coos Bay Joint Committee (Tr. 136). Moreover, it was the local membership which elected the dispatchers themselves (R. 20; Tr. 157). Under the agreement, the Local underwrote one-half of the cost of operating the hall, while the International contributed no funds towards its operation (R. 20; Tr. 144, U. Ex. 2, p. 42). During the early stages of their protest, moreover, it was Armstrong, as president of respondent, whose assistance the grievants sought. (See Tr. 37-40, 100-102.) At one point, Armstrong informed the employees that the Joint Committee would hear their complaints, although at the appointed hour no representatives of the Joint Committee, the Local, or the International appeared.

Armstrong was present and remained silent on October 8 when Jakovac ordered Thomas and Warnken to leave the hall (R. 26; Tr. 125, 173). Cf. *N.L.R.B.* v. *International Longshoremen's, etc., Union, et al.*, 283 F. 2d 558, 567, n. 6 (C.A. 9).

Thus, the uncontradicted evidence establishes that the International and PMA prescribed in detail the powers and duties of the Joint Committee; that the International retained effective control of the union representatives by virtue of its power of appointment and removal; and that the International elected to share its responsibilities with the Local by delegating its power of appointment and permitting the Local to elect the dispatchers from its own membership. Nor is it surprising that the International would share its authority with the Local, since International headquarters are located some 400 miles away in San Francisco (Constitution, ILWU, Article II). The Local is obviously better able to appraise the performance of the union officials in its own port. Indeed, on at least three previous occasions when agency problems have arisen under the procedure in question, this Court has found that ILWU delegated this function to its locals despite the rights reserved to the International in its contract with PMA. See *N.L.R.B.* v. *International Longshoremen's, etc., Union, etc.*, 210 F. 2d 581, 584-585 (C.A. 9); *N.L.R.B.* v. *Waterfront Employers of Washington*, 211 F. 2d 946, 949 (C.A. 9); *N.L.R.B.* v. *International Longshoremen's, etc., Union, Local 10, et al.*, 283 F. 2d 558, 565 (C.A. 9).

The PMA contract recites, moreover, that it was executed by ILWU "on behalf of itself and each and

all of its longshore locals." (U. Ex. 2, p. 1.) The agreement provides that "there shall be no favoritism or discrimination in the hiring or dispatching of [qualified] longshoremen," and that "there shall be no discrimination in connection with any action [under] this agreement either in favor of or against any person because of . . . activity for or against the Union . . . ." (U. Ex. 2, pp. 46, 54). Under Section 18, entitled "Good Faith Guarantee," the agreement recites that "the parties are committed to observe this Agreement in good faith. The Union commits the locals and every longshoreman it represents to observe this commitment without resort to gimmicks or subterfuge." (U. Ex. 2, p. 79.)

Respondent's accountability for the conduct of the dispatchers "must be determined in light of the general law of agency." *N.L.R.B.* v. *International Longshoremen's etc., Union, et al.*, 283 F. 2d 558, 563 (C.A. 9). It is well settled, however, that "[i]n determining responsibility for union activities, the principles of agency and its establishment are to be construed liberally." *Colson Corp.* v. *N.L.R.B.*, 347 F. 2d 128, 137-138 (C.A. 8), cert. denied, 382 U.S. 904. The sum of the evidence is that respondent selected and paid the dispatcher, selected from its own membership the union representatives on the Committee which directed the dispatcher's day-to-day operations, and was the express beneficiary of the collective bargaining agreement which establishes the hiring hall and regulates its operations. The Board could reasonably find that the dispatchers executed their duties on behalf of the Local and subject to its control—

in short, that an agency relationship existed between respondent as principal and the dispatchers as agents. See Restatement, Agency, 2d, Section 1. Respondent's connection with the operation of the hiring hall is both direct and substantial, and the devious treatment of the complainants in this case is clearly the very sort of "gimmick or subterfuge" which the International obligated itself not to engage in through its local affiliates. See Section 18 of the PMA-ILWU agreement.

Accordingly under well settled principles of agency, respondent is answerable for the unlawful refusal of Jakovac and Oldland to refer these men to jobs. Paraphrasing the language of this Court (*N.L.R.B.* v. *International Longshoremen's, etc., Union, et al.*, 283 F. 2d 558, 564, 566), the action taken by the dispatchers was "within the general class of conduct" authorized by the bargaining agreement and conferred upon dispatchers when they are selected by respondent; it is respondent, as the source of that authority, that "must take the responsibility if it is wrongly used." See also, Section 2(13) of the Act. Nor is a contrary result required by virtue of the contract provisions outlawing such discrimination; not only did Armstrong acquiesce in the expulsion of the grievants from the hall in October, but the law is well settled "that an agent may well be acting within the scope of his authority even when he commits an act specifically forbidden by his principal." *N.L.R.B.* v. *International Longshoremen's, etc., Union, et al., supra,* 283 F. 2d at 565.

This is clearly such a case, and the Board properly found that respondent violated Section 8(b)(2) and (1)(A) of the Act by causing the PMA employers to discriminate against Wilson, Warnken and Thomas.

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

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July 1966.

CERTIFICATE

The undersigned certifies that he has examined the provisions of rules 18 and 19 of this Court, and in his opinion the tendered brief conforms to all requirements.

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APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

DEFINITIONS

Sec. 2. * * *

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

* * * *

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint:

* * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * *

(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein,

and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record . . . . Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the . . . Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

APPENDIX B

INDEX TO REPORTER'S TRANSCRIPT

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General Counsel's Exhibits

No.	Identified	Offered	Received
1(a)-1(h)	4	4	4
2(a)-2(g)	12	16	19
3	21	52	54
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5	55	55	57

Respondent's Exhibits

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2	135	135	135

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